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10/561,261	02/10/2006	Harmannus Franciscus, Maria Schoo	VE.25	5706
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SWANSON & BRATSCHUN, L.L.C.			HO, ANTHONY	
8210 SOUTHPARK TERRACE			ART UNIT	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/561,261	Applicant(s) SCHOO ET AL.
	Examiner ANTHONY HO	Art Unit 2815

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 17 March 2008.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 22-36 and 42 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 22-36 and 42 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-166/08)
Paper No(s)/Mail Date _____

4) Interview Summary (PTO-413)
Paper No(s)/Mail Date _____

5) Notice of Informal Patent Application

6) Other: _____

DETAILED ACTION

This is in response to amendment to application no. 10/561,261 filed on March 17, 2008.

Claims 22-36 and 42 are presented for examination.

Claims 37-41 have been cancelled.

Specification

The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 22-36 and 42 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 22 recites the limitation "two different electroluminescent functionalities...the emission spectrum of the diode exhibit at least two intensity maxima." This limitation is vague and indefinite because it is unclear from this definition that the two electroluminescent functionalities refer to the emission of two wavelengths from the active layer. Therefore, one of ordinary skill in the art would not be able to define the metes and bounds of the claimed invention.

In response to applicant's argument that the claim is definite and well defined, examiner asserts that although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 22-36 and 42, as best understood, are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Yu et al (US PUB 2002/0017612).

Yu et al discloses a light emitting diode having at least one semiconductive electroluminescent active layer which comprises at least two different electroluminescent functionalities, wherein the emission spectrum of the diode exhibits at least two intensity maxima and wherein the active layer comprises at least one

electroluminescent organic compound (paragraph 0080 – paragraph 0112). Yu et al also discloses a detector in optical communication with the LED (see Figure 1).

The recitation “wherein the emission spectrum of the diode exhibits at least two intensity maxima” in the claim specifies an intended use or field of use and is treated as nonlimiting since it has been held that in device claims, intended use must result in a structural difference between the claim invention and the prior art in order to patentably distinguish the claim invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. *In re Casey*, 152 USPQ 235 (CCPA 1967); *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). A claim containing a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus if the prior art apparatus teaches all the structural limitations of the claim. *Ex parte Masham*, 2 USPQ2d 1647 (Bd. Pat. App. & Inter. 1987).

Furthermore, the recitation “wherein the emission spectrum of the diode exhibits at least two intensity maxima” in the claim is functional language and is treated as nonlimiting since it has been held that in device claims, the device must be distinguished from the prior art in terms of structure rather than function. *In re Schreiber*, 128 F.3d 1473, 1477-78, 44 USPQ2d 1429, 1431-32 (Fed. Cir. 1997) The absence of a disclosure in a prior art reference relating to function did not defeat the Board’s finding of anticipation of claimed apparatus because the limitations at issue were found to be inherent in the prior art reference. See MPEP 2114.

Claim Rejections - 35 USC § 103

Claims 22-36 and 42, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Burroughes (GB 2340304) in view of Capasso et al (US Patent 6,278,134).

Burroughes discloses a light emitting diode having at least one semiconductive electroluminescent active layer (page 12) which comprises at least two different electroluminescent functionalities (page 12, first paragraph), wherein the emission spectrum of the diode exhibits at least two intensity maxima (Figure 14) and wherein the LED comprises an electroluminescent polymer (F6M) and an electroluminescent single dye (perylene).

The recitation "wherein the emission spectrum of the diode exhibits at least two intensity maxima" in the claim specifies an intended use or field of use and is treated as nonlimiting since it has been held that in device claims, intended use must result in a structural difference between the claim invention and the prior art in order to patentably distinguish the claim invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. *In re Casey*, 152 USPQ 235 (CCPA 1967); *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). A claim containing a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus if the prior art apparatus teaches all the structural limitations of the claim. *Ex parte Masham*, 2 USPQ2d 1647 (Bd. Pat. App. & Inter. 1987).

Furthermore, the recitation "wherein the emission spectrum of the diode exhibits at least two intensity maxima" in the claim is functional language and is treated as nonlimiting since it has been held that in device claims, the device must be distinguished from the prior art in terms of structure rather than function. *In re Schreiber*, 128 F.3d 1473, 1477-78, 44 USPQ2d 1429, 1431-32 (Fed. Cir. 1997) The absence of a disclosure in a prior art reference relating to function did not defeat the Board's finding of anticipation of claimed apparatus because the limitations at issue were found to be inherent in the prior art reference. See MPEP 2114.

Capasso et al discloses a detector in optical communication with the LED (see Figure 7).

The advantage is to provide the use of a single light source for generating a reference signal and a detection signal in a detection system wherein the λ_{\max} of the reference signal differs from the λ_{\max} of the detection signal (see column 2, lines 16-21; column 9, lines 22-29).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the light emitting diode as taught by Burroughes with a detector in optical communication with the LED as taught by Capasso et al in order to provide the use of a single light source for generating a reference signal and a detection signal in a detection system wherein the λ_{\max} of the reference signal differs from the λ_{\max} of the detection signal.

Claims 22-36 and 42, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Hatwar (EP 1286569) in view of Capasso et al (US Patent 6,278,134).

Hatwar discloses a light emitting diode having at least one semiconductive electroluminescent active layer (Table 1) which comprises at least two different electroluminescent functionalities (Table 1), wherein the emission spectrum of the diode exhibits at least two intensity maxima (Figure 8) and wherein the LED comprises a filter (paragraph 0050; paragraph 0096; paragraph 0060), which filter selectively has at least a reduced transmission of light of a wavelength between two consecutive maxima (the filter selects one maxima to produce a red, green or blue and has a reduced transmission for other wavelengths, therefore at least for wavelengths between two maxima).

The recitation "wherein the emission spectrum of the diode exhibits at least two intensity maxima" in the claim specifies an intended use or field of use and is treated as nonlimiting since it has been held that in device claims, intended use must result in a structural difference between the claim invention and the prior art in order to patentably distinguish the claim invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. *In re Casey*, 152 USPQ 235 (CCPA 1967); *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). A claim containing a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus if the

prior art apparatus teaches all the structural limitations of the claim. *Ex parte Masham*, 2 USPQ2d 1647 (Bd. Pat. App. & Inter. 1987).

Furthermore, the recitation "wherein the emission spectrum of the diode exhibits at least two intensity maxima" in the claim is functional language and is treated as nonlimiting since it has been held that in device claims, the device must be distinguished from the prior art in terms of structure rather than function. *In re Schreiber*, 128 F.3d 1473, 1477-78, 44 USPQ2d 1429, 1431-32 (Fed. Cir. 1997) The absence of a disclosure in a prior art reference relating to function did not defeat the Board's finding of anticipation of claimed apparatus because the limitations at issue were found to be inherent in the prior art reference. See MPEP 2114.

Capasso et al discloses a detector in optical communication with the LED (see Figure 7).

The advantage is to provide the use of a single light source for generating a reference signal and a detection signal in a detection system wherein the λ_{\max} of the reference signal differs from the λ_{\max} of the detection signal (see column 2, lines 16-21; column 9, lines 22-29).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the light emitting diode as taught by Hatwar with a detector in optical communication with the LED as taught by Capasso et al in order to provide the use of a single light source for generating a reference signal and a detection signal in a detection system wherein the λ_{\max} of the reference signal differs from the λ_{\max} of the detection signal.

Response to Arguments

Applicant's arguments with respect to claims 22-36 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANTHONY HO whose telephone number is (571) 270-1432. The examiner can normally be reached on M-Th: 10:30AM-9:00PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kenneth Parker can be reached on 571-272-2298. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/A. H./
Examiner, Art Unit 2815
/Kenneth A Parker/
Supervisory Patent Examiner, Art Unit 2815